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EX PARTE OR LATE FILED

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VIA HAND DELIVERY

December 23, 2002

EX PARTE

Marlene Dortch
Secretary
Federal Communications Commission
The Portals
TW-A325
445 12th Street, S.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

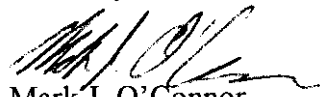
Re: Oral *Ex Parte* Presentation
CC Docket No. 01-337

Dear Ms. Dortch:

On December 20, 2002, Dave Baker, Vice President, EarthLink, Inc., spoke with Jordan Goldstein, Senior Legal Advisor to Commissioner Copps, via telephone regarding the SBC Forbearance Petition of October 3, 2001, incorporated into the above-referenced docket. In this call, EarthLink reiterated several points it has previously filed in the docket. Namely, a Commission decision on nondominance would be inappropriate at this time. Similarly, the lack of an FCC Order on the Petition would also be inappropriate, as it would allow SBC's Petition to be granted by operation of law without any safeguards attaching thereto. Rather, if the FCC were to grant SBC's Petition for Forbearance, it should be for the limited purpose of allowing SBC-ASI to detariff so long as safeguards (in addition to the separate affiliate) are adopted.

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, four copies of this Notice are being provided to you for inclusion in the public record in the above-captioned proceeding. Should you have any questions, please contact the undersigned.

Sincerely,



Mark J. O'Connor
Counsel for EarthLink, Inc

CC: Jordan Goldstein

Noted & filed 12/23/02
JAG:GLO
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